

PT 03-23

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

COMMUNITY PLAYERS THEATRE

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**A.H. DOCKET # 00-PT-0035
DOCKET # 99-57-08**

P.I. # 14-34-480-028

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Dennis S. O'Brien, Livingstone, Mueller, O'Brien, & Davlin, P.C. for Community Players Theatre; Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue

Synopsis:

A hearing in this matter was conducted to determine whether McLean County Parcel Index No. 14-34-480-028 qualified for a property tax exemption during the 1999 assessment year. Mr. Terrence Dawson, treasurer of Community Players Theatre (hereinafter referred to as "Applicant") and Mrs. Marie Dawson, board member and box office worker¹ for the applicant were present and testified on behalf of applicant.

The issues in this matter include whether applicant qualifies as a charitable organization that owned the subject parcel during the 1999 assessment year and whether the parcel was used

¹ It is unclear what her box office position is. See Finding of Fact No. 14.

by applicant for charitable purposes during that time period. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that McLean County Parcel Index No. 14-34-480-028 did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 8)

2. The Department received the request for exemption of the subject parcel from the McLean County Board of Review. The board recommended granting the exemption. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)

3. Located on the subject property is a one-story 8,128 square foot theatrical building. Applicant uses the building for theatre education classes, rehearsals, and production of its plays. The theatre holds about 250 persons. (Dept. Ex. No. 1; Tr. pp. 20, 68)

4. The constitution of the applicant states that its objectives are: “(A) The study of the art of theatre thru youth and adult classes and performance; (B) The promotion and presentation of such plays and dramatic works as may be deemed worthy and suitable; (C) The encouragement of original dramatic work among the members; and (D) A stimulation of interest in and appreciation for drama in the community”. (Dept. Ex. No. 1)

Membership

5. The bylaws of the applicant state that membership of applicant consists of season subscription holders. All members have a vote in the election of officers and a voice in the business transactions. (Dept. Ex. No. 1)

6. Members of the applicant paid dues in 1999². Currently membership dues are \$60. For their membership dues, members are entitled to vote, have an opportunity to be on applicant's board, have an opportunity to see applicant's productions, and have the right to say which plays applicant produces. (Dept. Ex. No. 1; Tr. pp. 16-17, 35-36)

7. Applicant has hundreds of members. (Tr. pp. 36-37)

8. Complementary memberships may be issued at the discretion of the board of governors. There is no complementary membership based upon need. (Dept. Ex. No. 1; Tr. p. 37)

9. In 1999, applicant issued less than 10 complementary memberships, none based upon need. (Tr. p. 37)

Board

10. Applicant's constitution and bylaws establish a 16-member board of governors³ for the applicant. Eight are elected each year to serve for a two year term. The board of governors prepares the slate of candidates. The president, vice president, and the sixteen governors, from whom the secretary and treasurer are chosen, constitute the board. Each board

² There was no evidence offered to indicate that applicant had more than one class of membership in 1999. Applicant testified that membership dues was \$60 (Tr. p. 17); \$50 (Tr. p. 40); \$48 (Tr. p. 35); or \$40 (Tr. pp. 35, 40). Applicant offered no evidence, other than oral testimony, about the amount of membership dues in 1999. The testimony is inconclusive about the amount of membership dues in 1999.

³ Applicant's bylaws and constitution refer to the board of governors. The testimony referred to the board of directors. (Tr. pp. 9-10, 16, 36, 54-55, 60.) As the responsibilities testified to are the same, and the testimony refers to the bylaws and constitution, it is reasonable to conclude that applicant uses the terms directors and governors interchangeably.

member has one vote. Applicant's president, vice-president, secretary, and treasurer constitute the executive committee. The president only votes in case of a tie. (Dept. Ex. No. 1)

11. Only members of applicant can serve on the board of governors. The amount of dues for membership is established annually by the board of governors. (Dept. Ex. No. 1)

12. The board of governors also appoints the next board. The season ticket holders, at the annual meeting, must ratify and thereby elect the members of the board. (Dept. Ex. No. 1; Tr. p. 36)

13. During the season, input is solicited from applicant's members regarding the selection of plays. Season ticket holders, as members, have a voice in the productions selected for the next season. The board of governors presents the next year's list of plays to the membership at the annual meeting. (Dept. Ex. No. 1; Tr. p. 36)

14. When the available seats for performances exceed the number of membership/season tickets sold, single admission tickets are available. The prices for those tickets are fixed annually by the board of governors. Applicant currently charges \$15 for a musical and \$13 for a play⁴. The president, box office chairperson, and marketing chairperson at his/her discretion may issue complementary single admission tickets. The president must approve free tickets. (Dept. Ex. No. 1)

15. Applicant's bylaws state that the compensation for the box office chairperson and staff is covered by the board of governors.⁵ (Dept. Ex. No. 1)

16. Applicant's bylaws contain no provisions for free or reduced rate policies for ticket sales based upon need. (Dept. Ex. No. 1; Tr. pp. 51-52)

⁴ The testimony of the prior treasurer was that he was not sure what the ticket prices were in 1999. He thought they might have been \$12 for a musical and either \$6 or \$8 for a "straight" play. (Tr. p. 37-38)

⁵ Marie Dawson testified she is a volunteer in the box office. She did not identify the box office chairperson in 1999. Ms. Dawson is a Certified Public Accountant. (Tr. p. 66) The financial statement for June 1, 1998 through May 31, 1999 shows administrative expenses of \$57,453 and box office staff payments of \$2480. (Dept. Ex. No. 1)

Use of the property

17. Applicant presents five shows a year; three musicals and two plays. Rehearsals are six to seven weeks in length and the shows are performed for five weeknights and three weekends. Applicant has four performances on each of the weekends. (Tr. pp. 14-15)

18. Applicant provides performances for the general public. The actors and apprentices⁶ are all volunteers that are not paid for their labors. Actors do not have to be a member of applicant. (Tr. pp. 11-12, 36)

19. For the period of June 1, 1998 through May 31, 1999, applicant's income statement details: membership income - \$32,970⁷; box office receipts (bor) for *Lilies Of the Field* - \$2,663; bor - *1940's Radio Hour* - \$6,889; bor - *The Secret Garden* - \$12,917; bor - *The Secret Garden*-ED \$2,680; bor - *Beau Jest* - \$3,591; bor - *How to Succeed.* - \$5,694; bor - Summer - *Peter Pan* - \$6,633; bor - other - *Gershwin* - \$4,240; building rental income - \$150⁸; corporate sponsor - \$3,000⁹; contributions - \$4,488¹⁰; grant - \$1,000¹¹; sign project income - \$2,600¹²; advertising - \$2,975¹³; advertising income>CPA - (\$1,488)¹⁴; costume/properties rental Inc. - \$1,069¹⁵; first night income - \$2,500¹⁶; interest income - \$106; interest income-BOT - \$1,082; other income - \$633; participant fee income - \$1,100¹⁷;

⁶ Applicant offers on-the-job training for actors and apprenticeships for set building, set design, lighting, lighting design, prop-construction, make-up, and costuming. (Tr. pp. 11, 26)

⁷ The total amount of membership dues from June 1, 1998 through May 31, 1999, was \$32,970. This number is not evenly divisible by any of the possible amounts of membership dues testified to. See Finding of Fact No. 6; footnote no. 2.

⁸ The Board of Elections for the City of Bloomington uses applicant's property twice a year for this rent. (Tr. p. 41)

⁹ Donations from companies to help cover applicant's expenses for royalties, costume rental, paint etc. (Tr. pp. 42, 49)

¹⁰ Cash contributions from applicant's members. (Tr. pp. 42-43)

¹¹ The Harman Arts Grants from the Town of Normal. (Tr. p. 43)

¹² Verizon, applicant's neighbor, helped with the expenses of repairing applicant's sign on the exterior of the building. (Tr. p. 43)

¹³ Income from people who put advertisements in applicant's programs. (Tr. p. 44)

¹⁴ Commercial Printing Associates does applicant's printing. (Tr. p. 44)

¹⁵ Cleaning and restocking fees paid to applicant for costumes it loans to other theatres. (Tr. p. 45)

¹⁶ 1st Night is a New Year's Eve Party sponsored by Normal, Bloomington, and McLean County and held at Illinois State University. Applicant performed at the event. (Tr. p. 45)

¹⁷ Fees charged for a makeup workshop applicant held. (Tr. p. 46)

concession income – \$1,140; T-shirt income – \$1,365¹⁸; photography/video income – \$632¹⁹; memorabilia income – \$1,018; commemorative book income – \$160; and gift certificate sales – \$270 for total income of \$102,077²⁰. Applicant’s expenses for the same period totaled \$100,179 for a net profit of \$1,899. (Dept. Ex. No. 1; Tr. pp. 40-48)

20. Memberships, ticket sales, sales of concessions, and advertising income account for more than 95% of applicant’s revenues in 1999. (Tr. pp. 55-56)

21. Applicant accepts donations of lumber, paint, and costumes. The evidence is not clear whether the amounts attributable to those donations appear on applicant’s income sheet. (Tr. pp. 18, 49)

22. Currently, applicant charges \$15 for a non-member general admission ticket to a musical and \$13 for a play. School groups are currently charged \$6 for a musical and either \$4 or \$5 for a ticket play²¹. Students that qualify for the Federal Hot Lunch Program are given free admission. (Tr. pp. 21-22)

23. Applicant pays a stipend to the master builder, designer, director, and producer of each production. The stipend is an expense reimbursement that ranges from \$50 to \$300. (Tr. pp. 15-16)

24. Applicant provides speakers for organizations in the area as well as for tours of its theatre. (Tr. pp. 12-13)

25. Applicant’s volunteers give consulting advice to area businesses. Applicant makes its building, equipment, and costumes available to other entities when not needed for applicant’s productions. (Applicant’s Ex. No. 1; Tr. pp. 24-30, 53-55)

¹⁸ Show T-shirts applicant has screen printed for cast members to buy. (Tr. pp. 46-47)

¹⁹ Applicant arranges for pictures at rehearsals that it makes available for cast members to purchase. (Tr. p. 47)

²⁰ Applicant asserted that it received grants from the Town of Normal Harman (phonetic) Arts Grants and the Illinois Arts Council. (Tr. p. 35) Only the amount of the Harman Arts Grants appears on the “Income Statement”.

²¹ These charges may have been different in 1999. (Tr. p. 37-38) There was no documentary evidence presented on this issue for the year 1999 and the oral testimony was not definitive about the amounts charged.

26. Applicant's bylaws contain rental provisions for applicant's theatre building.
(Dept. Ex. No. 1)

27. Applicant has no capital stock or shareholders. (Tr. p. 57)

28. Applicant does not discriminate on the basis of race, creed, color, or national origin with regard to its members. Applicant's building and programs are accessible to persons with disabilities. (Tr. pp. 17-18, 57-58)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 ILCS 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify

as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

In Randolph Street Gallery v. Zehnder, 315 Ill.App.3d 1060, 1065 (1st Dist. 2000) the court reaffirmed the guidelines and criteria established in Methodist Old Peoples Home, *supra* at 156-7 as to what constitutes a charitable organization. Those guidelines and criteria are:

- 1) the organization benefits an indefinite number of people;
- 2) the organization has no capital, capital stock, or shareholders earning profits or dividends;
- 3) the organization derives its funds primarily through private and public donation and expends those funds for the purposes expressed in its charter;
- 4) the organization dispenses its benefits to all people that need and apply for them;
- 5) the organization places no obstacles in the way of those seeking its benefits; and
- 6) the organization uses its property primarily for charitable purposes.

As a threshold matter, applicant's purposes, as stated in its constitution and bylaws, are the study of the art of theatre, the promotion and presentation of dramatic works, the encouragement of original dramatic works and a stimulation of interest in and an appreciation for drama. Not only is the word "charitable" non-existent in applicant's purposes, the word is nowhere to be found in the organizational documents.

Applicant has no provision of waiver of fees, either of membership or individual tickets, in its bylaws. In fact, applicant admitted that there are no provisions in its bylaws for free or reduced rates for ticket sales. (Tr. pp. 51-52) In actions by any corporation to have real estate declared exempt from taxation for certain years on the grounds that it is a charitable corporation, the Illinois Supreme Court has held that the certificate of incorporation is the controlling evidence of the purpose for which the organization was created. Oak Park Club v. Lindheimer 369 Ill. 462 (1938). Applicant's purposes, as stated in its constitution, are the study and production of theatrical works.

Applicant's income from productions is \$47,807. This equals 47% of applicant's total income of \$102,077. The income from membership dues is \$32,970. This is 33% of applicant's total income. The membership gives a member the opportunity to see applicant's productions, as does the purchase by a non-member of a single admission ticket to one of applicant's plays. Applicant also has income from building rental, costume rental, participant fees, concessions, T-shirts, photography/video, memorabilia, commemorative book and gift certificate sales. Thus, the primary source of applicant's income is not from public and private charity, as suggested in Methodist Old Peoples Home, supra.

Although applicant alleges it gave away as much as 10-15% of the tickets to every show (Tr. pp. 22-24, 67-70), applicant offered nothing into evidence to substantiate the assertion. The bylaws are very clear that "complementary single admission tickets may be issued by the president, box office chairperson and marketing chairperson at his or her discretion and must be approved by the president." The bylaws are also clear that there is no provision for reduced or free tickets to be given to someone in need. (Dept. Ex. No. 1) Therefore, applicant has not established that, in fact, any free admissions based upon need were given away to the productions on this property during 1999, the real property tax year at issue.

Applicant's only exhibit is a list of the entities to whom it supplied "consulting services" and "partial list of loaned equipment". There was no documentation that the "consulting services" were given for free or that any equipment loaned to the schools, theatres, or the other organizations listed was given for free. In addition, no testimony was elicited from entities that applicant supplied services to; rather, applicant's financial statement shows rental for properties and costumes in the amount of \$1,069 and rental income of \$150. Applicant's income statement also has vague categories of "contributions income" - \$4,448, "interest income" - \$106; "interest income-BOT" - \$1,082, and "other income" - \$633, all amounts applicant failed to explain how they might be beneficial in establishing that applicant is a charitable organization.

Membership in applicant entitles the member to the right to vote, an opportunity to be on applicant's board, an opportunity to see applicant's productions, and the right to have a say as to which plays applicant produces. The greatest benefits of membership are season passes to applicant's shows and voting rights. The facts here are similar to those discussed by the court in DuPage Art League v. The Department of Revenue, 177 Ill.App.3d 895 (2nd Dist. 1988). DuPage Art League was also a membership organization that charged yearly dues of \$20 for an individual and \$30 for a couple. Only members were allowed to exhibit their work in the League art gallery and all the work in the gallery had to be marked for sale. The artist determined the sales price of the work and the gallery retained a 20% commission. The Art League had scholarships for children's art classes but the evidence did not establish that those scholarships were based on a child's ability to pay the fee for the class.

Citing Methodist Old Peoples Home, *supra*, the court held that DuPage Art League was not entitled to a property tax exemption as a charitable organization for various reasons. Namely, charity was not dispensed to those who need it, and obstacles prevented those who needed charity from obtaining it. The court found specifically that nothing in the League's

bylaws required the League to waive membership dues or tuition because of an inability to pay. *Id.* at 900-901. In addition, the League members impermissibly profited from the operations of the gallery. Only members were allowed to show their work and it was offered for sale. No person connected with a charitable organization is permitted to profit or gain in connection with the organization. *Id.* at 901.

Further, almost all of the League's support was from tuition, membership fees, and the sale of art created by its members. Where most of an organization's support is from this type of funding, its funds are not derived mainly from private and public charity. *Id.* at 901. The League offered some programs to the public, but the court concluded that those benefits were secondary, and the League's primary purpose is to benefit its members.

Similarly, applicant herein is an artistic theatre group with hundreds of members that paid for a membership in 1999. For the membership fee, members were allowed to have a vote as to the specific plays that applicant would show, were able to be on applicant's board of governors, and hold an office. The fee also entitled a member to tickets for the shows. If one of applicant's shows is not sold out, applicant charges non-members \$13-\$15 for the sale of a ticket. Thus, non-members are required to pay to see one of applicant's productions. Just as in DuPage Art League, *supra*, applicant has no waiver of fees for its memberships or ticket sales. Therefore, applicant did not dispense charity to all who need and apply for it and obstacles exist to obtaining the benefits the theatre group offers. In addition, applicant made a profit of \$1,899 in 1999. It is clear that this entity had money to use for charitable purposes for providing free tickets, or free memberships, but, the documentary evidence shows that no charity was provided. Applicant charged for all its services and goods when, in fact, they did not have to if they chose to dispense charity. Applicant had the resources to extend its services to those who did not have the ability to pay.

Lastly, almost all of the applicant's support was from membership fees and the sale of tickets to its shows. Where most of an organization's support is from this type of funding, its funds are not derived mainly from private and public charity. I therefore find, just as the court in DuPage Art League found, that applicant's primary purpose is to benefit its members.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967). Applicant has not established that it is a charitable organization using the subject property for charitable purposes.

It is therefore recommended that McLean County Parcel Index Number 14-34-480-028 remain on the tax rolls for the 1999 assessment year and be assessed to the applicant the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: November 24, 2003